IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5824 of 2007
Date of Decision: 23.4.2007

Block Development and Panchayat Officer

Petitioner

versus

Presiding Officer, Labour Court, Gurgaon and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Harish Rathee, Sr.DAG Haryana, for the petitioner

Jasbir Singh, J. (Oral)

By filing this writ petition, the petitioner prays that award dated 1.5.2006 (Annexure P/6), passed by the Industrial Tribunal-cum-Labour Court, Gurgaon, ordering reinstatement of respondent No.2- workman, along with payment of 40% of the back wages, be set aside.

It is apparent from the records and not disputed before us that respondent No.2 was taken in service on 1.1.1993. Letter of appointment reads thus:-

> *"Sh.Bhim Singh s/o Sh.Hari Singh R/o Vill. Matharsa, District Mohindergarh is hereby appointed as Jeep Driver w.e.f. 1.1.1993 on Daily wages. This order is for daily wages. In case the Government appoints any Jeep driver then your services will be terminated. This order is on daily wages."*

He continued as such till 30.3.2000, when his service was terminated, by passing the following order:-

> *"In compliance with the Joint Secretary, Haryana, Government, Development and Panchayat Department, Chandigarh's letter No.1127-5-ECD-II-2000/1785 dated*

14.3.2000, the services of Sh.Bhim Singh, working as daily wage driver, are hereby terminated with immediate effect w.e.f. 30.3.2000."

In order of termination, it has nowhere been stated that service of respondent No.2 was being dispensed with, on account of employment of some regular driver. It was said that as one Dharamvir Singh has been transferred to the office of the petitioner, it necessitated termination of service of respondent No.2. It is apparent from the records that for a long period of seven years, the respondent – workman continued in service. During this period, many letters were written by office of the petitioner, to regularize service of the respondent-workman as per Policy of the State government. It is not disputed before us that in view of Policy of the State government, respondent No.2 was entitled to be regularized. The State government, without any reason whatsoever, sidetracked the matter and respondent No.2 kept on performing the duty, as a daily wager. This is nothing but a colourable exercise of power. The post for appointment of permanent driver was in existence, respondent No.2 was working against the same, but still the petitioner decided to kept him on daily wages. Such like practice cannot be appreciated. The Tribunal below, by noting above said facts, has observed thus:-

"To prove this issue, the management has examined Shri Rampal, Assistant o/o BDPO, Gurgaon as MW1 who has deposed that the petitioner was appointed as driver on daily wages basis on 1.1.1993 on the condition that his services would be dispensed with on the appointment of a driver on the post. He further deposed that one Shri Dharambir was appointed as driver in terms of order dated 14.3.2000 who had

joined on the post on 30.3.2000 and thereafter, services of the petitioner were dispensed with. In his cross-examination MW1 has admitted that the petitioner had worked continuously as a driver for a period of about seven years. The worker has examined himself as WW1 and has supported on oath the facts pleaded by him in his claim statement and replication. The fact that the petitioner had worked as driver for a period of about seven years is not in dispute. The question is whether Section 25F of the I.D. Act is attracted to this case or not. The case of the management is that the services of the petitioner were dispensed with in accordance with the terms and conditions of the appointment letter dated 1.1.1993 and thus his removal from the service was not retrenchment as per Section 2 (oo) (bb) of the I.D. Act and accordingly Section 25F of the I.D. Act was not applicable. Admittedly, the petitioner was not served with any notice prior to his retrenchment from service nor he was paid retrenchment compensation or notice pay. First of all copy of appointment letter dated 1.1.1993 has not been proved in this case because original appointment letter was not brought and thus copy thereof was not exhibited. In such circumstances, the terms and conditions mentioned in the appointment letter cannot be read. For the sake of argument even if we take into consideration the appointment letter dated 1.1.1993, the perusal thereof shows that the petitioner was appointed on daily wages basis with a condition that in case the Government appointed any jeep driver then his service would be terminated. Exhibit MW1 is the copy of

termination letter dated 14.3.2000 showing that Sh.Dharambir Singh, driver was appointed as such by the Deputy Commissioner on temporary basis in the block Farukh Nagar and he was transferred to Gurgaon whereupon services of Shri Bhim Singh, daily wager (petitioner) were dispensed with. Shri Dharambir Singh was also a temporary driver appointed by the Deputy Commissioner. Section 2(oo) defines retrenchment and sub section (bb) of the said provision is an exception providing that termination of the services of the workman as a result of non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein did not mean termination or retrenchment under Section 2 (oo) of the I.D. Act. Now coming to the appointment letter dated 1.1.1993, there was no contract of employment between employer and workman for specific period or for a specific job and thus exception contained in sub clause 2(bb) cannot be attracted to the case in hand. The condition mentioned in the appointment letter that the service of the petitioner would be terminated on appointment of jeep driver by the Government indicates as to when and in what manner the services of the petitioner can be dispensed with. If a person is engaged for a specific period or for the execution of a specific work and a clear stipulation is made in the contract of employment that the services shall be terminated at the expiry of the work, of course, the workman shall not be entitled to claim that he had been retrenched or

that the action was violative of the provisions of I.D. Act. In the case in hand the termination order is nothing but is meant to exploit an employee and thus is to be excluded from the ambit of clause (bb) and the definition of "retrenchment" has to be given full meaning. The petitioner had completed more than seven years in continuous service of the department. Numerours correspondences between BD&PO Gurgaon and the Government of Haryana have been placed on record whereby it was repeatedly brought to the notice of the Government that the petitioner (Shri Bhim Singh) had been working as jeep driver on daily wages since 1.1.1993 and as per the policy and the previous incidents, he was to be regularized on the job. However, the Government of Haryana tried to side track the issue on one pretext or the other. The way in which the petitioner was kept as daily wager on the post of jeep driver for a period of more than seven years and the way in which he was thrown out of service by merely sending one temporary employee in his place, amounted to nothing but unfair labour practice and exploitation of an employee.

8. In all fairness to A.R. for the management, he has referred to D.B. authority of the Hon'ble Supreme Court of India cited as State of Rajasthan versus Rameshwar Lal Gahlot (1996 (2) SCT) on the point that if the appointment is for a fixed period, Section 25F does not apply as it is covered by clause (bb) of Section 2 (oo) of the I.D. Act. It was further observed that unless there was a finding that power under clause (bb) was misused or vitiated by malafide or that the appointment for a

fixed period was a colourable exercise of power, it could not be held that the termination was illegal. On the face of it, the cited authority is not applicable to the case in hand because the appointment in this case was not for a fixed period. On the other hand, the facts and circumstances of the case indicate that the authority has dealt with the entire matter with malafide intention, misusing its power. Thus, in such circumstances, I am of the considered view that Section 25F of the I.D. Act was attracted in the case in hand and since the management did not pay any retrenchment compensation or notice pay so there was violation of Section 25F of the I.D. Act and the termination of the service was not justified. This issue is accordingly decided in favour of the petitioner/ workman and against the management/ respondent."

We feel that the order passed is perfectly justified. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

April 23, 2007 **(Nirmal Yadav)**
gk **Judge**